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Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

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No. _____

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GEORGE GLASCOE

v.

SHOPPERS FOOD WAREHOUSE
CORPORATION

---

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF MARYLAND

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PETITION FOR A WRIT

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July 6, 1998

54 pp

## Questions Presented

Whether it is a deprivation of an individual's constitutional right and benefit to a trial by Jury for a trial judge to grant judgment notwithstanding the verdict to a corporation when substantial factual questions existed as to whether a corporation's use of rubber mats that moved, and slipped when walked upon and did not have beveled edges, and were prone to bunching up in doorway of supermarket that caused an elderly individual to fall and seriously and permenantly injure himself?

## TABLE OF CONTENTS


| | PAGE |
|---|---|
| QUESTIONS PRESENTED . . . . . | i |
| TABLE OF AUTHORITIES . . . . . | iv |
| DECISIONS BELOW . . . . . | 1 |
| JURISDICTION . . . . . | 2 |
| CONSTITUTION PROVISIONS INVOLVED . . | 2 |
| STATEMENT OF THE CASE . . . . . | 2 |
| REASONS FOR GRANTING THE WRIT . . . . | 11 |
| 1. The trial judge's decision to grant judgment notwithstanding the verdict invaded and disregarded the constitutionally protected province of the jury and made improper factual determinations tantamount to second-guessing the factual findings of the jury relevant to the question of the jury's evaluation of the evidence and credibility in the jury's finding of negligence by the corporation . . . . . | 12 |
| CONCLUSION . . . . . | 23 |
| APPENDIX A . . . . . | 1a |
| APPENDIX B . . . . . | 2a |

APPENDIX C . . . . . 16a

## TABLE OF CASES AND AUTHORITIES


**CASES** **PAGE(S)**

Anderson v. Liberty Lobby, Inc.
477 U.S. 242, 255(1986) . . . . . 14, 15

Baltimore Transit Co. v. Worth
188 Md. 119, 52 A.2d 249 (1947) . . . 16

Banks v. Iron Hustler Corp.
475 A.2d 1243, 1250 (Md.App. 1984) . 16

Dennard v. Green
335 Md. 305, 322-23, 643 A.2d 422, 431 (1994) . . . . . 15

Dickey v. Hochschild, Kohn & Co.
157 Md. 448, 146 A. 282 (1929) . . . 16

Edwards v. Gramling Engineering Corp.
322 Md. 535, 588 A.2d 793, 797, cert. denied . . . . . 23, 25
502 U.S. 915 (1991)

Giant Food v. Mitchell
640 A.2d 1134, 334 Md. 633 (1994) . . 21

Houston v. Safeway Stores
346 Md. 503 (1997) . . . . . 15

Molaison v. West Bros. of Thibodaux, Inc.
338 So. 2d 726 (La. App. 1976).
E. 79 . . . . . passim

Mondawmin Corporation v. Kress
266 A.2d 8 (1970) . . . . . 16

Moulden v. Greenbelt Consumer Services, Inc.
210 A.2d 724 (1965) . . . . . 20

Sherman v. Suburban Trust Co.
282 Md. 238, 242, 384 A.2d 76 (1978) 21

Short v. Wells
249 Md. 491 (1967) . . . . . 22

Suburban Trust Co. v. Waller
44 Md. App. 335 (1979) . . . . . 17, 22

Sun Cab Co. v. Reustle
192 A. 292, 296 (Md. 1937) . . . . . 23

**FEDERAL RULES**

28 U.S.C. 1257(a) . . . . . 4

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Petitioner, George Glascoe, respectfully prays that a writ of certiorari issue to review the judgment and decision of the Court of Appeals of Maryland entered on April 7, 1998.

## DECISIONS BELOW

The decision of the Court of Appeals for Maryland is not reported. The

decision along with the order denying Petitioner's Petition, the decision of the Court of Special Appeals of Maryland, and the oral ruling of the trial judge from the bench are attached as Appendices hereto.

## JURISDICTION

The decision of the Court of Appeals of Maryland was entered on April 7, 1998. This Court's jurisdiction is invoked under 28 U.S.C. 1257(a).

## CONSTITUTIONAL PROVISIONS INVOLVED

The constitutional provisions involved are the Seventh Amendment and the 14th Amendment of the United States Constitution.

## I. STATEMENT OF THE CASE

### A. Nature of the Case

This ia a dispute involving an elderly individual, Petitioner George

Glascoe (Glascoe), against a corporation, Respondent Shoppers Food Warehouse Maryland Corp., (Shoppers) charging that Shoppers breached the applicable standard of ordinary care by failing to maintain its premises in a safe condition. Mr. Glascoe demonstrated that Shoppers was negligent in its use of unsafe rubber mats in the entrance of its Takoma Park Store and in failing to properly inspect and maintain these mats. As a result of Shoppers' negligence, Mr. Glascoe tripped and fell because of the unsafe mats and suffered severe, permanent injuries.

**B. Trial Proceedings**

This case was tried before a jury in the Circuit Court for Prince George's County, Judge Thomas P. Smith, presiding. On March 21, 1997, the jury found that Shoppers was in fact negligent, that

Shoppers' negligence was the proximate cause of Glascoe's injuries and awarded damages in the amount of $120,320.00. Shoppers moved for judgment notwithstanding the verdict in Petitioner's favor.

A hearing was held on April 25, 1997 to decide Shoppers' motion. The court ruled from the bench, contrary to the jury, in favor of Shoppers on its motion for judgment, finding that there was no evidence "that the breaches of duty identified, proximately or were a approximate cause of Mr. Glascoe's injury" and that "We don't know what the defect was". Glascoe filed a timely Notice of Appeal. The Court of Special Appeals of Maryland affirmed the trial court. Glascoe appealed to the Court of Appeal of Maryland. The Court of Appeals affirmed

by denying Glascoe's petition for review based on a lack of public interest. Petitioner has been deprived of his constitutional right to a jury trial in his case.

George Glascoe, age 85, tripped and fell as he entered the Shoppers Food Warehouse store in Takoma Park, Maryland on Saturday, March 25,1995 at about 12:25 p.m. As a result of his fall, Mr. Glascoe suffered a fracture to the neck of his right femur near the hip socket and several broken ribs. Mr. Glascoe was hospitalized for several weeks, much of the time in traction, underwent hip replacement surgery and was required to participate in rehabilitative therapy to regain his ability to walk. Mr. Glascoe's injury is permanent. His medical bills totaled $20,130.00. There was no evidence

to contradict Mr. Glascoe's injuries or the fact that he fell inside the Shoppers Food Warehouse Store. The injuries he suffered formed the basis of his action against Shoppers.

**Evidence presented**

Mr. Glascoe testified that he was tripped when his left foot "got hooked on this rug", referring to a small gray mat that Shoppers' Food Warehouse placed in the doorway of the Supermarket. Mr. Glascoe, at one point in the proceedings, left the witness stand to physically demonstrate how his foot got caught in the floormat as he described the event to the jury. At trial, Mr. Glascoe identified photographs of the entrance to the store and the type of mats that were on the floor at the time of his fall. The

photographs were dated March 30, 1995. These photographs were admitted into evidence and published to the jury.

Mr. Glascoe testified that his fall was caused by the mats. He stated unequivocally that "I got messed up in that rug" when asked directly what caused him to fall. Mr. Glascoe's expert witness established at trial the hazardous conditions created by these mats and the availability of superior products that would have been safer and created less of a trip and fall hazard. This expert, Dr. Stephen I. Rosen, was qualified to testify by the trial court on the issues of the availability of non-slip under surfaces that would prevent a mat from slipping, that non-slip mats could prevent a mat from bunching and that mats wear out and

that when they wear out that mats can bunch and slip.

Shoppers presented evidence that created questions of fact as to what caused Glascoe to fall. Ms. Angela Spivey, a check out cashier, testified that she observed that Mr. Glascoe "had a dizzy spell and fell" and did not appear to trip. Records and testimony produced at trial by Shoppers were consistent with Mr. Glascoe's testimony that he was tripped by the rugs in that one document described the incident as "Mr. Glascoe's cane got caught in the rug. He tripped and dislocated his hip." Shoppers also created issues of fact regarding their level of care with regard to the mats in question. The store manager, Jim Zello, testified that the mats were replaced once a week, and that they were usually

replaced on a Friday. The mats depicted in the pictures presented at trial were the same as the mats that tripped the Plaintiff. Mr. Zello testified that he had not become aware of any problem with the mats between the time the store opened at 8:00 a.m. and the time of Mr. Glascoe's fall at 12:25 p.m. Mr. Zello testified that the rugs in the entrance way could be moved. Mr. Zello testified that he observed a ripple in one of the rugs depicted in the photographs presented as evidence at trial, indicating that the rug was not laying flat. Mr. Zello further testified that over 1,000 people entered the store that \morning, crossing those rugs and that it was possible that the rugs could be moved by persons walking over them and shopping carts being pushed across them. Mr. Zello could not state

that he or anyone else actually inspected the rugs in question between the time the store opened at 8:00 a.m. and the time of Mr. Glascoe's accident at 12:25 p.m.., only that it was the "policy" to inspect the floor every hour. Further, the Safety Coordinator for Shoppers Food Warehouse, Larry Armbruster, was unable to produce any inspection logs that would indicate that the entrance way was inspected at all that day.

After deliberating over this evidence, the jury rendered a verdict for the Mr. Glascoe in the amount of $120,320.00. Mr. Glascoe also petitioned the Court for costs in the amount of $575.70. This petition was never ruled upon in light of the Court's granting of Shoppers' motion for j.n.o.v.

## REASONS FOR GRANTING THE WRIT

Petitioner was deprived of his right to a trial by jury when the Court made erroneous findings of fact in support of its conclusion that there was no evidence of negligence on Shoppers' part. The Court below erred in granting Appellee's motion for judgment non obstante verdictum by invading the province of the jury and second-guessing the jury's factual determinations and credibility determinations relevant to the question of primary negligence and proximate cause when there existed substantial issues of fact and these issues of fact were resolved by the jury on a special verdict sheet. In light of the evidence presented at trial, it was improper for the trial court to determine that "there is simply no evidence that the breaches of duty

identified proximately or were an approximate cause of Mr. Glascoe's injury" and that the Defendant's failure to inspect the mats on a frequent basis was not dispositive of the question of negligence and that "We don't know what the defect was". This was a factual question for the jury, not the judge.

**1. The trial judge invaded the province of the jury and made inaccurate factual determinations relevant to the question of primary negligence by Appellee in his decision to grant judgment notwithstanding the verdict**

The trial judge improperly invaded the province of the Jury by making inappropriate factual determinations and resolving credibility issues contrary to the Jury's verdict. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255(1986)("Credibility determinations, the weighing of the evidence, and the drawing

of legitimate inferences from the facts are jury functions, not those of a judge...." Here, the jury found, based on the evidence presented at trial, that Shoppers Food Warehouse was negligent. The Court was constitutionally bound by the jury's findings unless the evidence was insufficient to support them. Houston v. Safeway Stores, 346 Md. 503 (1997), Dennard v. Green, 335 Md. 305, 322-23, 643 A.2d 422, 431 (1994). In this case, the evidence was more than sufficient to support the jury's findings. As the nonmovant, Glascoe's evidence was to be believed as so found by the jury and not second-guessed by the trial judge. Cf. See Anderson v. Liberty Lobby, Inc., 477 U.S. at 255. ("The evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in

his favor."). See also, Baltimore Transit Co. v. Worth, 188 Md. 119, 52 A.2d 249 (1947); Mondawmin Corporation v. Kress, 266 A.2d 8, 12 (1970); Banks v. Iron Hustler Corp., 475 A.2d 1243, 1250 (Md.App. 1984). Any review of the evidence stated above in the light most favorable to Mr. Glascoe supports the conclusion that there was sufficient evidence to sustain the jury's finding that Shoppers' Food Warehouse was negligent and that the trial judge erred constitutionally in granting judgment n.o.v.

**a. Absence of Inspection Logs**

As an invitee, Mr. Glascoe owed Mr. Glascoe a duty of "reasonable and ordinary care to keep his premises safe for the invitee and to protect him from injury caused by an unreasonable risk which the

invitee, by exercising ordinary care for his own safety, will not discover." Sherman v. Suburban Trust Co., 282 Md. 238, 242, 384 A.2d 76 (1978). Shoppers failed to put on any evidence that they exercised ordinary due care to make the environment safe for persons such as Mr. Glascoe. Store Manager Jim Zello testified that he checked the rugs on the day of the incident at 8:00 a.m. when the store opened, but did not testify that the rugs were checked hourly during the day according to Shoppers Food Warehouse policy. He merely stated that it was the "policy" of Shoppers Food Warehouse to check the floors on an hourly basis--not that he or any other employee actually made such a check of the floor. Id. Mr. Zello testified that between the time the store opened and the time Mr. Glascoe

fell, over 1,000 people had entered the store and that these persons could have moved the mats with their feet and their shopping carts.

Though requested in discovery, Shoppers produced no sweep logs or other written documentation at trial that the floor area where Mr. Glascoe tripped and fell was ever inspected on that day. Given this lack of evidence of ordinary care by Shoppers in insuring that their economy floor mats were flat and free of tripping hazards between the hours of 8:00 a.m. and 12:25 p.m., the jury's finding of negligence was not only reasonable, but expected. Primary negligence is properly a jury question where the trip and fall accident was either the result of a defective design or a failure to inspect. Dickey v. Hochschild, Kohn & Co.

157 Md. 448, 146 A. 282 (1929). The high volume of patrons crossing the mats in question on the morning of the incident is a significant factor that was properly considered by the jury in light of the Appellee's duty to inspect the mats on a frequent basis as part of its fulfillment of its obligation to exercise ordinary care. Molaison v. West Bros. of Thibodaux, Inc., 338 So. 2d 726 (La. App. 1976). Shoppers did not inspect the floor in accordance with its own policy and this failure to inspect, the jury found, was the proximate cause of Mr. Glascoe's injuries.

Shoppers' failure to inspect the floor at any time between 8:00 a.m. and 12:25 p.m. was negligent as the jury found.

The reason for Shoppers' policy of inspecting the mats on an hourly basis was that Shoppers knew that the economy mats could be moved, bunch up and create a tripping hazard. In failing to make these inspections, Shoppers abdicated its responsibility to make the floor safe or to warn Mr. Glascoe of any unsafe condition. This evidence of constructive knowledge distinguishes this case from Moulden v. Greenbelt Consumer Services, Inc., 210 A.2d 724 (1965), upon which Shoppers relied heavily at trial (J.N.O.V. granted because plaintiff failed to present evidence that storekeeper had constructive knowledge of bean on the floor). Constructive knowledge of this type of dangerous condition is imputed to the proprietor if he has had a reasonable opportunity to learn of the dangerous

condition, but failed to do so. Giant Food v. Mitchell, 640 A.2d 1134, 334 Md. 633 (1994); See also, Molaison v. West Bros. of Thibodaux, 338 So.2d 726 (La. App. 1976). In failing to make the hourly inspections, it was reasonably foreseeable that a Plaintiff, such as Mr. Glascoe, would have been injured by the bunching of the mats that Shoppers admits were movable by the 1,000 customers and carts walking across them the morning of the incident.

There is now a conflict between the law of the various states as to the safety standards that persons shopping in stores can expect as a result of this decision. For example, in Louisiana, the courts have found that lack of inspection logs can be properly considered by a jury in light of the storekeeper's duty to inspect the mats on a frequent basis as part of its

fulfillment of its obligation to exercise ordinary care. See, Molaison v. West Bros. of Thibodaux, Inc., 338 So. 2d 726 (La. App. 1976).

The trial court specifically found that "there is simply no evidence that the breaches of duty identified proximately or were a approximate cause of Mr. Glascoe's injury" in making its erroneous ruling directing a verdict for the Shoppers. This finding was highly improper in light of the fact that, in Maryland, questions of proximate causation are jury questions. See, Suburban Trust Co. v. Waller, 44 Md. App. 335 (1979) ("Ordinarily, a question of proximate or "responsible" as opposed to superseding causation is a matter to be resolved by the jury"); Short v. Wells, 249 Md. 491 (1967) (where there is direct as well as circumstantial evidence of

negligence, issue should have been submitted to the jury); Sun Cab Co. v. Reustle, 192 A. 292, 296 (Md. 1937) ("The true rule is that what is proximate cause of an injury is ordinarily a question for the jury. It is only when the facts are *undisputed, and are susceptible of but one inference*, that the question is one of law for the court, and whether it will or will not be a question for the jury will depend upon the facts of each case.") (emphasis added). Further, the Court submitted a special verdict form to the jury to specifically address the question of proximate cause. The judge was bound by the jury's findings of fact as to this question. Edwards v. Gramling Engineering Corp., 322 Md. 535, 588 A.2d 793, 797, cert. denied, 502 U.S. 915 (1991).

There were clearly disputed factual questions relevant to the question of proximate cause of Mr. Glascoe's injuries that were solely within the jury's province to resolve. These factual disputes were not susceptible of but one inference, but were susceptible of multiple inferences. Mr. Glascoe's testimony concerning the rug causing him to fall clearly created a factual dispute with Shoppers' witnesses. Mr. Glascoe's live demonstration and testimony, as far as the jury was concerned, clearly indicated that the rug caused his fall. The jury could have determined, otherwise had there been credible evidence to the contrary. The jury, however, correctly concluded that Shoppers' negligent use of non-beveled edged mats that bunched up when walked upon was the proximate cause

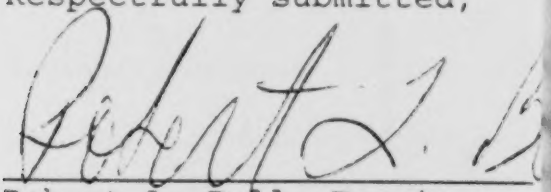
of Mr. Glascoe's injuries. This was a jury question and a constitutional violation for the trial court to disregard it.

By submitting the question of proximate cause to the jury on a special verdict form as a special interrogatory, the judge was bound by the jury's findings of fact. Edwards v. Gramling Engineering Corp., 322 Md. 535, 588 A.2d 793, 797, cert. denied, 502 U.S. 915 (1991). The court's reversal of the jury's finding of proximate cause deprived Mr. Glascoe of this constitutional right and should be reversed.

**V. CONCLUSION**

For these reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Court of Appeals of Maryland.

Respectfully submitted,



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July 6, 1998

**CERTIFICATE OF SERVICE**

This is to certify that three copies of the foregoing Petition for Writ of Certiorari were mailed by first class mail, postage prepaid, this **6th** day of July, 1998 to:

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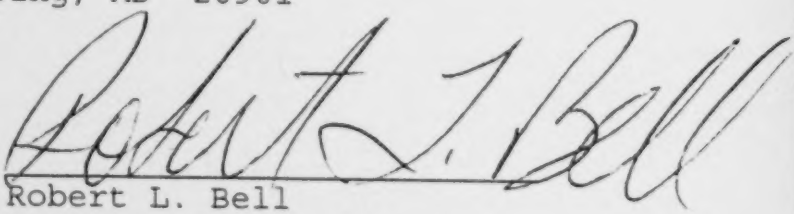

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